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EXPRESS MAIL LABEL NO.: EV343637291US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 75/845,350, INTELLIWEAR  
Published in the *Official Gazette* on October 30, 2001



08-11-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

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MARK D. TANNEN,	:	
	:	
Opposer,	:	
	:	Opposition No. 91 151109
vs.	:	
	:	
JAY MACK,	:	
	:	
Applicant.	:	
-----X	:	

**OPPOSER'S MOTION TO EXTEND TIME TO  
OBJECT AND/OR RESPOND TO DISCOVERY AND  
TO EXTEND TERMS FOR DISCOVERY AND TESTIMONY**

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Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and in accordance with the *Trademark Trial and Appeal Board Manual of Procedures* §509, Opposer, Mark D. Tannen d/b/a American Intelliware, in the above-captioned opposition proceeding respectfully moves the Trademark Trial and Appeal Board ("Board") for an order: (i) extending Opposer's time to object and/or respond to Applicant's first set of document requests and interrogatories, served by mail on or about July 7, 2003, by a period of eighteen days, i.e., up to and including August 29, 2003; and (ii) extending the discovery, testimony and trial dates by a period of ninety (90) days in accordance with the following schedule:

The period for discovery to close	:	November 30, 2003
Testimony Period for the Party in Position of Plaintiff to Close (Opening thirty days prior thereto)	:	February 28, 2004

Testimony Period for the Party  
in Position of Defendant to Close : April 28, 2004  
(Opening thirty days prior thereto)

Rebuttal Testimony Period to Close  
(Opening fifteen days prior thereto) : June 12, 2004

**1. Motion To Extend Time To  
Object and/or Respond To Discovery**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and in accordance with the *Trademark Trial and Appeal Board Manual of Procedures* §509, Opposer respectfully requests that the Board extend Opposer's time to raise objections and/or respond to Applicant's first set of document requests and interrogatories served by mail on or about July 7, 2003. Opposer's objections and responses are due on August 11, 2003, pursuant to 37 C.F.R. §2.119. Opposer requires an additional 18 days to prepare his objections and responses to Applicant's document requests and interrogatories.

The bases for the extension is that Opposer has been traveling and the discovery sought is extensive. Opposer requires additional time to review the discovery sought by Applicant and his files in order to properly object and/or respond to same. On August 8, 2003, Opposer requested an extension of time from Applicant in order to respond to Applicant's first set of document requests and interrogatories. On August 11, 2003, Opposer's counsel called Applicant's lawyers to follow up the August 8 request. As of the filing of this motion, Opposer has not received a response from Applicant or his lawyers in this matter. This request for an extension of time is not sought for purposes of delay but for the good cause shown herein.

**2. Motion To Extend Terms for  
for Discovery and Testimony**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and in accordance with the *Trademark Trial and Appeal Board Manual of Procedures* §509, Opposer respectfully requests that the discovery, testimony and trial dates be extended by a period of ninety (90) days in accordance with the above schedule.

On April 26, 2002, Applicant filed and served its Answer, Motion for Summary Judgment and Motion to Dismiss. Pursuant to Trademark Rule 2.127(d), 37 C.F.R. § 21.27(d), the Board suspended proceedings on January 22, 2003 to allow consideration of the pending dispositive motions, including Opposer's alternative cross-motion for summary judgment. On May 28, 2003, the Board issued an order denying the dispositive motions and setting September 1, 2003 as the closing date for discovery.

In view of the motion practice to date, the parties had only three months to complete discovery. Opposer has been traveling. He requires additional time object and respond to Applicant's discovery requests and to take discovery, so that he may affirmatively plead his case, pursue this opposition and have a trial on the merits.

Accordingly, on August 8, 2003, Opposer's counsel proposed to Applicant's lawyers that the parties extend the discovery, testimony and trial dates in this matter. On August 11, 2003, Opposer's counsel called Applicant's lawyers to follow up the August 8 proposal to extend discovery and trial dates. As of the filing of this motion, Opposer has not received a response from Applicant or his lawyers on this issue.

Opposer intends respond to Applicant's document requests and interrogatories, to pursue discovery but requires additional time to take discovery in this matter. This motion is made in good faith and without any intention of causing a delay

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but rather, to allow further time to complete discovery and ready for trial following the disposition of the motion pending before the Board.

**WHEREFORE**, for the reasons stated and the good cause shown herein, Opposer, by its counsel, respectfully requests that (i) the term by which Opposer shall object and/or respond to Applicant's document requests and interrogatories be extended to August 29, 2003 and (ii) the discovery, testimony and trial dates be extended for a period of ninety (90) days each in accordance with the above schedule.

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: August 11, 2003

By: Paul J. Reilly  
Paul J. Reilly  
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Attorney for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee Service" in an envelope with sufficient postage addressed to:  
BOX TTAB NO FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive, Arlington, Virginia 22202-3513

Paul J. Reilly  
Attorney Name

August 11, 2003  
Date of Deposit

Paul J. Reilly  
Signature

August 11, 2003  
Date of Signature

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, **OPPOSER'S MOTION TO  
EXTEND TIME TO OBJECT AND/OR RESPOND TO DISCOVERY AND TO EXTEND  
TERMS FOR DISCOVERY AND TESTIMONY**, was served on Applicant's attorneys of  
record via the United States Postal Service as First Class Mail, in an envelope with sufficient  
postage, addressed to following:

Robert T. Daunt, Esq.  
DAVIS & SCHROEDER  
215 W. Franklin Street, 4th Floor  
Post Office Box 3080  
Monterey, California 93942

on August 11, 2003.

By: Paul J. Reilly  
Paul J. Reilly